IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10330 OF 2004

-: ALONG WITH :-

CIVIL APPLICATION NO. 257 OF 2005

Akhil Maharashtra Sthanik Mathadi Ani General Kamgar Sanghatana..... .... Petitioner.

Versus

State of Maharashtra & Ors. .... Respondents.

Mr. K. P. Anilkumar for the Petitioner.

Mr. Y. D. Mulani, AGP for Respondent Nos.1 to 3.

Mr. S. P. Dhulapkar for Respondent No.4.

Mr. K. Patil for Respondent No.5.

CORAM: DALVEER BHANDARI, C.J. &
S. A. BOBDE, J.

DATED : APRIL 4, 2005.

P.C. :

The petitioner is a Trade Union of employees named in Exhibit “A”, pages 12 of the petition, who have been working with respondent No.4 since the date of joining according to the petitioner.

2. Respondent No.1 is the State of Maharashtra, Respondent No.2 is the Secretary, Contract Labour Advisory Board, Respondent No.3 is the Commissioner of Labour, Respondent No.4 is the employer of employees mentioned in Exhibit “A” and Respondent No.5 claiming to be a labour contractor.

3. Respondent No.4 is engaged in the business of manufacturing Pharmaceutical products, etc. The employees named in Exhibit “A” are working for respondent No.4, however,

respondent No.4 is showing that these employees are contract labourers engaged by respondent No.5. The petitioner union approached respondent Nos.1 and 2 vide letter dated 3rd November, 2004 requesting to take action against respondent Nos.4 and 5 for abolition of contract labour. Reminder has been sent on 13th December, 2004.

4. In pursuance to the show cause notice, reply has been filed by respondent No.4. It is mentioned in reply that majority of persons whose names are given in Annexure “A” are not working at present in the factory of respondent No.4. The said employees long back had stopped reporting for work for the reasons best known to them and the contractor. Respondent No.4 company has not received any demand from the concerned contract workers regarding their absorption and therefore, the question of referring any such non-existent dispute for adjudication to the Tribunal does not arise. Respondent No.4 company is engaged in

manufacturing pharmaceutical products. The skilled labours are required for the same. The workers who are engaged through contractor are for doing the incidental work like house-keeping, gardening, etc. It is not connected to the manufacturing activities of respondent No.4. The Company is registered under the Contract Labour Act as a Principal employer. The contractor also obtained a licence under the Contract Labour Act.

5. Respondent No.5 has also filed separate reply. In the reply, respondent No.5 stated that respondent No.4 has undertaken to provide contract work of house-keeping, gardening, packing, etc. The employees employed are fixed and determined by respondent No.4. Supervising of the concerned employees is the responbility of respondent No.4. According to respondent No.4 names given in Annexure “A” are wholly incorrect. The persons at serial Nos.16-24 were never employed and only four persons are at present working with the respondent No.4. According to

respondent No.4 none of the persons named in Annexure “A” has put in 240 days of continuous service.

6. Respondent No.3 has also filed reply, in which it is mentioned that the proposal for abolition of contract labour system in the establishment of respondent No.4 has been submitted and the same will be put before the State Advisory Board.

7. In this petition, the petitioner union has prayed that a direction be issued to respondent No.2 for referring the Industrial Dispute for adjudication to appropriate Industrial Tribunal or Labour Court in respect of the absorption and entitlement of the employees regarding consequential benefits.

8. We have heard the learned Counsel for the parties. The prayer of the petition seems to be reasonable. In the facts and circumstances of the case, this petition is allowed in terms of

prayer clause (b) of the petition.

9. In view of this decision, the learned Counsel for the petitioner submits that nothing further survives in the Civil Application No. 257 of 2005, which is accordingly dismissed.

CHIEF JUSTICE

S. A. BOBDE, J.